

## CITY COUNCIL AGENDA MEMORANDUM

### **SUBJECT:**

Resolution No. 8522 authorizing execution of a Settlement Agreement with Sound Transit related to approvals necessary for the NE 4<sup>th</sup> Street Extension Project, Phase 1, extending NE 4<sup>th</sup> Street from 116<sup>th</sup> Avenue NE to the eastern boundary of the Burlington Northern Santa Fe (BNSF) Railway Corridor.

### **FISCAL IMPACT**

This resolution authorizes the City to enter into a Settlement Agreement with Sound Transit for approvals necessary to construct the NE 4<sup>th</sup> Street extension project. Sound Transit has an easement for High Capacity Transit (HCT) over this portion of the BNSF Railway Corridor and has expressed an intention to use the corridor for possible future projects. Sound Transit has indicated that potential future commuter rail or light rail expansions could use part of the corridor. The proposed agreement obligates the City to indemnify Sound Transit for any increased costs to their future projects within the BNSF corridor that are the direct result of the NE 4<sup>th</sup> Street Extension project across the corridor.

Sound Transit's potential future project within the BNSF is not funded, has not been designed, and is not included in any of its current capital plans. As a result, it is difficult to determine the potential financial impact to the City that might result from the indemnification provisions of the proposed Settlement Agreement. Staff has developed a rough estimate of the potential increased costs, which include approximately \$1 million additional costs to Sound Transit's use of the corridor as a high capacity transit facility. Any such project, however, would require environmental review and other processes prior to final design and approval of the future project. During these review and design processes, the City would have adequate time to determine how to accommodate these costs within the then-current Capital Investment Plan (CIP) budget.

### **STAFF CONTACT**

Dave Berg, Director, 452-6468  
*Transportation Department*

Mary Kate Berens, Deputy City Attorney, 452-4616  
Monica Buck, Assistant City Attorney, 452-4082  
*City Attorney's Office*

### **POLICY CONSIDERATION**

#### **Bellevue City Code/State law:**

Under Bellevue City Code 4.30.010 and RCW 8.12.040, major real property acquisitions must be approved by City Council. RCW Chapter 8.12 establishes the authority and procedure for cities to acquire property by condemnation for streets, street improvements, and other public purposes.

#### **City Practice:**

- The City's Real Property Policies provide that property rights necessary for public use are to be acquired through negotiation and voluntary transactions whenever possible, and, when it is necessary

to exercise condemnation authority, that such property be condemned and taken subject to payment of just compensation in the manner provided by law.

- In support of these policies and property acquisition best practices, City staff will work with property owners to achieve voluntary, negotiated transactions both before and after Council grants condemnation authority. These efforts continue throughout the acquisition process, including where a condemnation action has been commenced in court.

#### Mobility and Infrastructure Initiative (M&II):

The NE 4<sup>th</sup> Street project is one of a number of high priority transportation investments that make up the M&II. The M&II was formed to address unprecedented growth in Downtown Bellevue and to support planned growth in the Bel-Red and Wilburton areas. Improvements to construct NE 4<sup>th</sup> Street between 116<sup>th</sup> and 120<sup>th</sup> Avenues NE, along with additional projects such as 120<sup>th</sup> Avenue NE between NE 4<sup>th</sup> Street and Northup Way, the planned extension of NE 6<sup>th</sup> Street, the planned NE 15<sup>th</sup>/16<sup>th</sup> Street multi-modal corridor, and improvements to 124<sup>th</sup> Avenue NE, will support increased connectivity between Downtown Bellevue, the new Bel-Red transit-oriented-development node, and the Overlake regional growth centers. The new route will provide an alternate to and relieve congestion at key intersections including NE 8<sup>th</sup> Street at 112<sup>th</sup> Avenue NE and NE 8<sup>th</sup> Street at 116<sup>th</sup> Avenue NE. Improvements will enhance travel time and mobility options for passenger cars, transit, freight, pedestrians and bicycles.

#### **BACKGROUND**

On April 16, 2012, the City Council adopted Ordinance No. 6051 authorizing and providing for the acquisition of interests in land, including through condemnation, for the purpose of completing Phase 1 of the NE 4<sup>th</sup> Street Improvement Project. Phase 1 of this project extends from 120<sup>th</sup> Avenue NE to the eastern boundary of the Burlington Northern Santa Fe (BNSF) Railway Corridor.

On May 15, 2012, the City filed a Petition in Eminent Domain to acquire an easement to cross the BNSF Railway Corridor. At that time, the Port of Seattle was the underlying fee owner of the BNSF Railway Corridor and Sound Transit, Puget Sound Energy (PSE) and King County had easement rights within the corridor. Since that time, King County purchased the BNSF corridor from the Port of Seattle.

The NE 4<sup>th</sup> Street extension project has been designed to accommodate Sound Transit's, King County's and PSE's easement rights within the corridor to the extent feasible given the lack of specific designs for those projects. Although the NE 4<sup>th</sup> Street extension does not preclude these future projects, it likely increases the costs of those future uses above what would be necessary if no City street crossing exists. As a result, the City has negotiated agreements with King County (approved by Council on February 28) and Sound Transit (proposed for approval tonight) to indemnify them from these future cost increases. The City's approval of the Sound Transit Settlement Agreement is the final approval necessary and will allow the City to proceed with the necessary documentation to confirm certain grant funds.

Because the Port no longer retains any property interest in the corridor and PSE's easement rights will be retained and not affected by the project, both the Port and PSE will be dismissed from the pending eminent domain proceeding without any cost to the City. In addition, pursuant to the terms of the proposed Settlement Agreement, Sound Transit will also be dismissed from the pending condemnation action. Highlights of the major terms of the proposed Settlement Agreement with Sound Transit are as follows:

- Sound Transit's HCT Easement through the corridor is maintained;
- Sound Transit approves the design of the NE 4<sup>th</sup> Extension across the corridor;
- The City and Sound Transit identify potential future costs that may be incurred by Sound Transit for future HCT as a result of the NE 4<sup>th</sup> Extension ("Additional Costs");
- The City indemnifies Sound Transit from Additional Costs that directly result from the NE 4<sup>th</sup> Extension;
- Sound Transit agrees to provide design plans and estimates of Additional Costs during the planning stages of any future HCT for the City to budget for the Additional Costs;
- The parties agree to dismiss Sound Transit from the pending condemnation action.

### **EFFECTIVE DATE**

If approved, this Resolution becomes effective immediately upon Council adoption.

### **OPTIONS**

1. Adopt Resolution No. 8522 authorizing execution of a Settlement Agreement with Sound Transit related to approvals necessary for the NE 4<sup>th</sup> Street Extension Project, Phase 1, extending NE 4<sup>th</sup> Street from 116<sup>th</sup> Avenue NE to the eastern boundary of the Burlington Northern Santa Fe (BNSF) Railway Corridor.
2. Do not adopt Resolution No. 8522 and provide alternative direction to staff.

### **RECOMMENDATION**

Adopt Resolution No. 8522 authorizing execution of a Settlement Agreement with Sound Transit related to approvals necessary for the NE 4<sup>th</sup> Street Extension Project, Phase 1, extending NE 4<sup>th</sup> Street from 116<sup>th</sup> Avenue NE to the eastern boundary of the Burlington Northern Santa Fe (BNSF) Railway Corridor.

### **MOTION**

Move to adopt Resolution No. 8522 authorizing execution of a Settlement Agreement with Sound Transit related to approvals necessary for the NE 4<sup>th</sup> Street Extension Project, Phase 1, extending NE 4<sup>th</sup> Street from 116<sup>th</sup> Avenue NE to the eastern boundary of the Burlington Northern Santa Fe (BNSF) Railway Corridor.

### **ATTACHMENTS**

Proposed Resolution No. 8522

### **AVAILABLE IN COUNCIL OFFICE**

Sound Transit and City of Bellevue Settlement Agreement

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 8522

A RESOLUTION authorizing the execution of a Settlement Agreement with Sound Transit related to approvals necessary for the NE 4th Street Extension Project, Phase 1, extending NE 4th Street from 116th Avenue NE to the eastern boundary of the Burlington Northern Santa Fe (BNSF) Railway Corridor.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Manager or his designee is hereby authorized to execute the Settlement Agreement with Sound Transit related to approvals necessary for the NE 4th Street Extension Project, Phase 1, extending NE 4th Street from 116th Avenue NE to the eastern boundary of the Burlington Northern Santa Fe (BNSF) Railway Corridor, a copy of which agreement has been given Clerk's Receiving No. \_\_\_\_\_.

Passed by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2013, and signed in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

(SEAL)

\_\_\_\_\_  
Conrad Lee, Mayor

Attest:

\_\_\_\_\_  
Myrna L. Basich, City Clerk